

PART 2045 - GENERAL

Subpart GG - Adverse Actions - Delegation of Authority and Procedures

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PART 2045 - GENERAL

Subpart GG - Adverse Actions - Delegation of Authority and Procedures

§2045.1601 General.

Under Department Personnel Manual (DPM) Chapter 751, Subchapter 1-1b, the Administrator is delegated authority to take adverse actions, including removal, against all Farmers Home Administration (FmHA) employees except:

- (a) State Directors;
- (b) Employees in Schedule "C", SES, and P.L. 313 positions; and
- (c) Employees in grade GS or GM-14 and above.

§2045.1602 Definitions.

(a) A 752-B Action is an action outlined under Subpart B of Part 752, Title 5, Code of Federal Regulations. A 752-B Action applies to suspensions of 14 days or less.

(b) A 752-C Action is an action outlined under Subpart C of Part 752, Title 5, Code of Federal Regulations. A 752-C Action applies to:

- (1) Removals;
- (2) Suspensions for more than 14 days;
- (3) Furloughs without pay for 30 days or less; and
- (4) Reductions in grade or pay.

(c) A 432 Action is an action outlined under Subpart B of Part 432, Title 5, Code of Federal Regulations. A 432 Action applies to reassignments, reductions in grade and removals for unacceptable performance of one or more critical element.

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(d) A 315 Action is removal action taken against a probationary employee for unsatisfactory performance, conduct, and conditions arising before appointment.

(e) A 715 Action is a voluntary action requested by employees in executive departments and independent Agencies of the Federal Government, i.e., separation and/or reduction in grade or pay.

§2045.1603 Adverse actions.

An Adverse Action is any FmHA initiated action adversely affecting an employee. It includes oral warnings, letters of caution and reprimand; suspensions from duty without pay; reductions in grade or pay; furloughs without pay; and removals under Federal Personnel Manual (FPM) and DPM Chapters 315, 432, and 752.

§2045.1604 Redelegation of authority.

(a) The following National Office officials are redelegated authority for adverse actions agencywide concerning FmHA employees, except as restricted by §§2045.1601 and .1605 of this subpart:

- (1) Associate Administrator.
- (2) Deputy Administrator for Management (DAM).
- (3) Assistant Administrator for Human Resources (AAHR).

(b) The following positions are redelegated authority for adverse and disciplinary actions outlined in paragraph (c) of this section, for employees under their respective jurisdiction except as restricted by §§2045.1601 and .1605 of this subpart:

- (1) State Directors.
- (2) Deputy Administrator for Program Operations.
- (3) Assistant Administrators and Deputy Assistant Administrators.
- (4) Division and Staff Directors.

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(c) The positions listed in paragraph (b) of this section, above, are redelegated authority for the following actions and to redelegate these actions to Branch Chiefs and/or Section Heads under their jurisdiction, excepted as restricted by §§2045.1601, .1604(d), and .1605 of this subpart.

(1) Issuing letters of caution and reprimand. Letters of caution and reprimand will remain in the employee's Official Personnel Folder for a period not to exceed two years (Guide Letter 2045-GG-5).

(2) Issuing oral warnings and written confirmations.

(3) Suspensions for 14 days or less.

(i) Issuing letters proposing suspension (Guide Letter 2045-GG-2).

(ii) Reviewing and analyzing written and/or oral replies.

(iii) Issuing decision letters (Guide Letter 2045-GG-3).

(4) Issuing letters proposing indefinite suspensions (Guide Letter 2045-GG-6). When there is reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment may be imposed, the employee should be placed on administrative leave pending issuance of a decision.

(5) Issuing letters proposing removal, suspensions for 15 days or more, and reductions in grade or pay, except as restricted in §2045.1606(b)(4) (Guide Letter 2045-GG-7).

(6) Separation of probationary employees under FPM and DPM Chapters 315, Subchapter 8 (Guide Letter 2045-GG-4).

(7) Separation of employees for abandonment of position under FPM and DPM Chapters 715, Subchapter 3.

- (8) Acceptance of a voluntary reduction in grade or pay under FPM and DPM Chapters 715, Subchapter 4.
- (9) Acceptance of resignation of an employee not in good standing under DPM Chapter 715, Subchapter 1. The Chief, Employee Relations Branch (ERB), Personnel and Employee Relations Staff (PERS), will be notified immediately of the resignation of an employee under consideration for adverse action.
- (10) Issuing letters of proposal to remove and decision letters to employees who do not accept a directed reassignment outside the commuting area based on documented legitimate management reasons. This will include responsibility to represent the Agency before the Merit Systems Protection Board (MSPB) if the employee appeals the action. When an employee is removed for failure to accept reassignment and the removal is appealed to the MSPB, the State Office MUST forward TWO copies of the tabbed appeal file and the MSPB Order to the Chief, ERB.
- (11) Issuing Opportunity to Improve (OTI) Performance letters and proposals to reduce in grade or remove for unacceptable performance. The OTI letter and the proposal to reduce in grade or remove will be forwarded to the ERB for review and approval prior to being issued to the employee (Chapter 432 actions) (Guide Letter 2045-GG-8).
- (d) Except for decision letters and only upon review and approval by the Director, PERS, officials listed in paragraphs (a) and (b) of this section can redelegate to supervisory personnel under their jurisdiction, in whole or part, authority to take adverse action. This redelegation must be in writing and concurred by the AAHR (Guide Letter 2045-GG-1).
- (e) The DAM is redelegated authority to propose and decide 752-B and C actions against employees for discrimination in employment or program matters because of race, sex, religion, color, age, national origin, marital status, and physical or mental handicap. No adverse action will be taken until the discrimination aspects of the case have been resolved

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and/or closed by the Administrator. However, adverse actions can be taken against employees for other violations found in the investigation which are not due to discrimination.

(f) An official proposing a 752-C Action may not make the final decision. The final decision to take an adverse action under Subpart 752-C is redelegated to the DAM or AAHR except for issuing letters proposing to remove and decision letters based on failure to accept reassignment.

(g) The following positions are redelegated authority to hear employee's answers and to recommend to the deciding official a final decision on actions proposed under Subpart 752-B or C and for Chapter 432 cases.

(1) Director, PERS.

(2) Chief, ERB.

(3) Chief, Personnel Operations Branch, Supervisory and/or Personnel Management Specialist, Finance Office, St. Louis.

(4) Employee Relations Specialists.

(5) State Administrative Officers and Personnel Management Specialists.

(6) Administrative Officer Trainees.

(7) Those officials listed in paragraph (b) of this section.

(h) Officials listed in paragraph (a) and (b) of this section can redelegate to a managerial employee under his jurisdiction the authority to hear an employee's oral reply and to recommend a final decision on actions proposed under Subpart 752-C. The employee designated to hear the employee's oral answer will have the authority either to make or recommend a final decision on the proposed adverse action, and should be someone familiar with the administrative and/or program area.

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(i) The Assistant Administrator, Finance Office (AAFO) is further redelegated the authority to decide adverse action cases (432 and 752-C) for employees under his/her jurisdiction.

§2045.1605 Exceptions.

The officials listed in §2045.1604 (b) of this subpart do not have authority to take an adverse action when the case is based on:

- (a) Discrimination in the Equal Employment Opportunity program;
- (b) Civil rights discrimination in loan programs;
- (c) Employees filing grievances or appeals; and
- (d) Unfair labor practices.

§2045.1606 Processing adverse actions.

(a) Basis for adverse actions. The basis for an adverse action requires evidence that is very specific, clear, detailed, and all inclusive and supported by documentation. These factors need to be kept in mind whether reviewing, analyzing, or developing an adverse action. The basis for taking an adverse action may come from:

- (1) Office of the Inspector General (OIG) reports in the name of the FmHA office, employee, borrower, or third party:
 - (i) Investigation reports.
 - (ii) Audit reports.
- (2) FmHA administrative or non-criminal investigative reports.
- (3) FmHA program review reports.
- (4) Reports disclosing violations of safety and health instructions.
- (5) Documented valid complaints.

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(6) Other investigation reports. (The National Office must obtain permission from the agency which made the investigation.)

(7) Suitability information.

(b) Processing procedures. Prompt consideration must be given to the disciplinary aspects of administrative and investigative reports.

(1) When disciplinary action is appropriate, officials should initiate such action within 30 days after receiving the report or having been advised to take action by the Director, PERS or Chief, ERB (See §2045.1605 of this subpart for restrictions.)

(2) The "Table of Disciplinary Penalties" (Exhibit A of this subpart) will be used to achieve a reasonable degree of uniformity in the imposition of penalties. Any significant deviation from the Table requires a detailed written justification. (See DPM Chapter 751, Subchapter 1.)

(3) In taking adverse actions, officials will consider not only the nature of the offense but also the circumstances surrounding it, the length of service, and previous record of the employee.

(i) No adverse action shall be initiated against an employee unless there is adequate evidence of the truth of the allegations against the employee.

(ii) Officials taking adverse actions against employees will follow FPM and/or DPM Chapters 315, 432, 715, 751, and 752, as appropriate.

(4) A letter proposing a 752-C or 432 action will be forwarded to the ERB for review and approval prior to being issued to the employee. This may be accomplished by forwarding through the telemail system or telefax. The ERB Mail Box address is hr.pers.erb. This requirement is not imposed on those actions taken under delegated authority by the AAFO.

(5) A letter proposing a 752-C or 432 Action will be sent to the employee by Certified Mail-Return Receipt Requested or delivered in person. If the letter is delivered in person, the employee will be requested to sign an extra copy of the letter showing the date of delivery as a receipt. Should the employee refuse to sign, the employee delivering the proposed action will then sign, date and indicate delivery was made.

(6) An adverse action will be temporarily delayed when the investigation report is sent to the Assistant General Counsel for Legislation, Litigation, Research and Operations, Office of the General Counsel, for legal review or to the U.S. Attorney for consideration of criminal prosecution. The Chief, ERB will notify the State Director when the legal considerations are concluded.

(7) The Director, PERS or Chief, ERB are authorized to close OIG reports with the subject heading of an FmHA employee or FmHA office which contain irregularities by FmHA personnel without disciplinary action. The OIG report can only be closed upon receipt of the recommendation by the State Director when disciplinary action is recommended. A copy of the closeout letter should be forwarded to the Planning and Analysis Staff (PAS).

(8) Borrower and program investigations addressed to the State Director may be closed by the State Director without disciplinary action, if appropriate, after the Regional Attorney advises the State Office of the closing of the legal aspects of the case. A copy of the closeout letter should be forwarded to the PAS.

(c) Documents sent to the Director, PERS. A copy of the following documents will be forwarded by officials listed in §2045.1604 (a) and (b) of this subpart, promptly, to the Director, PERS.

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- (1) A copy of the OTI letter (432 action).
- (2) A copy of the notice of proposed action.
- (3) A copy of the analysis and recommendation for adverse actions.
- (4) Any other documents that support the action being proposed.
- (5) Employee's written answer.
- (6) A summary of the employee's oral answer.
- (7) Decision letters for those actions taken under the official redelegated authority.

§2045.1607 Advice and guidance.

Officials may obtain advice and guidance on adverse action matters from the ERB, PERS.

§§2045.1608 - 2045.1650 [Reserved]

Attachment: Exhibit A

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